

## **DRAFT NPD for WPCB discussion 3-12-03**

### **INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT NONRULE POLICY DOCUMENT**

Title:	Review of Sanitary Sewer Construction Permit Applications For Communities with Combined Sewer Overflow Outfalls
Identification Number:	Water – 005 - NRD
Date Originally Adopted:	
Dates Revised:	None
Other Policies Repealed or Amended:	None
Brief Description of Subject Matter:	This document outlines IDEM's procedures for review of sewer construction permit applications for communities with combined sewer overflow outfalls.
Citations Affected:	327 IAC 3-1-1 through 327 IAC 3-6-32.

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document should be used in conjunction with the applicable laws. This document does not replace applicable laws, and if it conflicts with those laws, the laws shall control. This nonrule policy document may be put into effect by IDEM thirty (30) days after presentation to the appropriate board and after it is made available to public inspection and comment, pursuant to IC 13-14-1-11.5. If this nonrule policy is presented to more than one (1) board, it will be effective thirty (30) days after presentation to the last board. IDEM will submit the policy to the Indiana Register for publication. Revisions to this nonrule policy document will follow the same procedure of presentation to the board and publication.

#### **BACKGROUND/DISCUSSION**

The Water Pollution Control Board (board) received a petition on September 12, 2001, for rulemaking per provisions under IC 13-14-8-5. After five (5) public hearings, the board adopted the hearing officer's report and recommendations; and, at its December 2001 meeting, the board requested IDEM to develop a nonrule policy document under IC 13-14-1-11.5 to outline policies

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and procedures for processing sewer construction permit applications in communities with combined sewer overflows.

The permitting program for construction of sanitary sewers is regulated under Article 3 of Title 327 of the Indiana Administrative Code (327 IAC 3). That article includes administrative rules for obtaining a construction permit as well as technical standards for the design and installation of sanitary sewers.

The issuance requirements for sanitary sewer construction permits are listed in 327 IAC 3-6-7. These requirements are basically reiterated in 327 IAC 3-6-4, “Certifications”, as language that is to be certified by both the design engineer and an authorized representative of the owner of the affected treatment and collection system.

The implementation of **the rule, wherever possible, should** not create disincentives to implementation of a long-term control plan or other capital projects designed to reduce CSO volumes, first flush discharges, or to provide treatment to previously untreated overflows.

In addition, this nonrule policy document should not create disincentives to urban redevelopment, brownfield revitalization, or provision of sanitary sewer service to unsewered areas. These activities and types of sewer connections represent a net environmental gain in terms of improved water quality, reduced urban sprawl, green space preservation, and reduced air pollution.

The five basic requirements in 327 IAC 3-6-7, with IDEM's interpretation for application in communities with CSOs, are as follows:

1. “The peak daily flow rate, in accordance with section 11 of this rule, generated in the area that will be collected by the project system, will not cause overflowing or bypassing in the collection system from locations other than NPDES authorized discharge points.”

IDEM interprets this requirement to mean that the peak daily flow for the new sewer will not result in overflows from any discharge point that is not authorized to discharge in the NPDES permit for the facility serving the sewer system. For

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combined sewer systems, CSO discharge points listed in an NPDES permit are generally authorized to discharge during wet weather events. A CSO community is required by its NPDES permit (or will be required when the NPDES permit is renewed) to implement a CSO Operational Plan and to develop and implement a Long Term Control Plan (LTCP) for CSO Management.

For combined sewer systems, CSO discharge points are not authorized to discharge except during wet weather events as addressed in the CSO Operational Plan and to be further addressed in the Long Term Control Plan. For purposes of implementing the wastewater construction permitting rule, IDEM will review available bypass/overflow incident reports and attempt to determine whether unauthorized discharges are occurring from NPDES discharge points for the affected system. If a community has reported a dry weather overflow from a CSO discharge point on the portion of the collection system affected by the permit application, IDEM will review the data further to determine the action to be taken as described in the review procedure section of this nonrule policy document.

Discharges from Combined Sewer Overflows (CSOs) that are not related to wet weather events are prohibited by the Clean Water Act. CSOs caused by wet weather events are contemplated and allowed within certain ascertained circumstances.

2. “Sufficient capacity exists in the receiving water pollution treatment/control facility to treat the additional daily flow.”

IDEM interprets this requirement to mean that there will be sufficient capacity in the receiving water pollution treatment/control facility to treat the proposed additional daily flow and prevent hydraulic or organic overload of the receiving water pollution treatment / control facility.

The water pollution treatment/control facility refers only to the wastewater treatment plant and does not include the sewer system (observe that there are separate definitions for “water pollution treatment/control facility” and “sanitary sewer” in 327 IAC 3-1-2 and the language “water pollution treatment/control facility or sanitary sewer” in 327 IAC 3-2-1).

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3. “The receiving water pollution treatment/control facility will remain in compliance with applicable NPDES permit effluent limitations.”

IDEM interprets this requirement to mean that there should be sufficient capacity in the receiving water pollution treatment/control facility to treat the additional daily flow and not cause exceedances of applicable NPDES permit effluent limitations.

4. “The sanitary sewer or collection system that is the subject of the construction permit application is to connect to a water pollution treatment/control facility that has been completed and put into operation.”

IDEM interprets this requirement to mean that the ability of the collection system to comply with 327 IAC 3 can not be contingent on water pollution treatment/control facility construction that has not been completed and put into operation.

5. “The proposed collection system does not include new combined sewers or a combined sewer extension to existing combined sewers.”

IDEM interprets this requirement to mean that neither the construction of new combined sewers nor the construction of additional combined sewers as an extension to an existing combined sewer system will be approved.

The Capacity Certification/Allocation Letter is included as Appendix A.

#### **Application Review Procedure**

On an annual basis, IDEM (currently by the Office of Water Quality, Compliance Evaluation Section) will review the compliance status of Indiana’s CSO communities. This compliance review may include, but not be limited to, the following:

- *CSO Discharge Monitoring Reports (DMRs)* for the previous calendar year
- *Monthly Reports of Operation (MROs)* for the previous calendar year
- *Bypass/Overflow Incident Reports* for the previous calendar year

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- Status of the *Combined Sewer System Operating Plan* (i.e., whether submitted, approved, updated, etc.)
- Status of the *CSO Long Term Control Plan* (LTCP) (i.e., whether submitted; approved or neither)
- Early Warning Sewer Ban (327 IAC 4) List
- Sewer Ban (327 IAC 4) List

The following **should** occur, dependant on the compliance status of the community, when reviewing construction permit applications:

- If there have been dry weather combined sewer overflows (CSOs) attributable to inadequate hydraulic capacity (i.e., not attributable to maintenance or mechanical failures) in the previous calendar year in any of the sewers downstream of the proposed construction, the construction permit application **should** be denied since dry weather CSOs were attributable to inadequate hydraulic capacity problems.
- If the community is on neither the Early Warning Sewer Ban nor the Sewer Ban lists (and there are no other known or identified compliance issues or problems), the permit application will be reviewed to determine adherence to the administrative requirements and technical standards described in 327 IAC 3.
- The certification statements will be reviewed to ensure that the administrative information and the technical standards are in concert with the statements.
  - i. **If there are no discrepancies (change?)** and the following are verified, the permit will be issued:
    - 1. Sufficient capacity exists in the receiving water pollution treatment/control facility to treat the additional daily flow.

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- 2. The receiving water pollution treatment/control facility will remain in compliance with applicable NPDES permit effluent limitations.
- 3. The sanitary sewer or collection system that is the subject of the construction permit application is to connect to a water pollution treatment/control facility that has been completed and put into operation.
- 4. The proposed collection system does not include new combined sewers or a combined sewer extension to existing combined sewers.

ii. **If there are discrepancies (change?)**, the reviewer will contact the community and/or the design engineer to obtain information to resolve the discrepancies. Information that may be requested could include the provision of the hydraulic capacity of sewers (separate sanitary and combined) downstream of any proposed connection or, **if appropriate to the community's collection system (clarify?)**, information that would indicate if the wastewater treatment plant was at peak design flow rate or capacity before combined sewer overflow activation when there were wet weather events.

**iii. The IDEM annual review of CSO community compliance status will be reviewed to assess the following:**

- 1. If the evaluation concludes that adequate hydraulic capacity exists in the conveyance sewers that will transport the additional wastewater flows a construction permit may be issued.
- 2. If it is determined that there could be an increase in the annual number of **unauthorized** CSO activations due to the additional wastewater flow, the permit may not be issued until additional information is received from the community to verify that no increase **in unauthorized discharges** would occur. If information cannot be provided by the community to verify no increase in **unauthorized** CSO activations then a variance (per IC 13-14-8-8) would have to be granted for a construction permit to be reconsidered.

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- If the community is on the Early Warning Sewer Ban list or if compliance issues or problems are identified, the permit application review staff **will review the CSO community's annual compliance review** regarding compliance with all NPDES permit requirements.
  - i. If the data evaluation concludes that the additional wastewater flow related to the proposed new sewer(s) can be successfully transported and treated within existing downstream sewers and treatment plant, a construction permit for the proposed sewer(s) may be issued if administrative requirements and technical standards have been met and the certifications are in accordance with the requirements and standards.
  - ii. If the data evaluation concludes that the additional wastewater flow cannot be transported or treated without causing NPDES Permit limit exceedances, the permit may not be issued.
  - iii. If it is determined that there will be an increase in the annual number of unauthorized CSO activations due to the additional wastewater flow, the permit may not be issued. A variance (per IC 13-14-8-8), including the demonstration of undue hardship, would have to be granted for a construction permit to be reconsidered. Examples of the undue hardship may be if the additional wastewater flow is to be generated from the connection of failing septic systems, brownfields, or urban redevelopment areas. The connection of failing septic systems, brownfields, or urban development areas **generally** represents a net environmental gain due to net improvements in water quality, reduction of urban sprawl, preservation of green space, reduced air pollution, and other environmental benefits.
  - iv. In addition, **IDEM's review will determine** if the community has reported combined sewer overflows on the affected sewer system in its Bypass/Incident Reports **early in the review process**. (It is noted that a wet weather event may be several days in duration because of extended periods of precipitation/snow melt and soil saturation extending the period that inflow and infiltration [I/I] may influence the hydraulic capacity of a sewer.)

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If the community, or affected portion of the community's collection system, appears on the Sewer Ban list, a deficiency notice will be sent to the permit applicant that will include notification to them that a construction permit cannot be issued unless the community applies for and receives a Sewer Ban Waiver (per 327 IAC 4-1-6) and is granted a variance (per IC 13-14-8-8) from affected portions of 327 IAC 3 administrative requirements. Requests for the waivers and variances will be processed by the **Office of Water Quality and the Office of Enforcement**, as is appropriate for the specific request. If waivers and variances are granted, then the construction permit may be issued if all other administrative requirements and technical standards are met.



## **APPENDIX A**

### **Capacity Certification/Allocation Letter**

The authorized representative of the town, city, sanitary district, or any entity that has jurisdiction over the proposed collection system must sign and date the application and issue the following certification:

“I certify that I have reviewed and understand the requirements of 327 IAC 3 and that the sanitary collection system proposed, with the submission of this application, plans, and specifications, meets all requirements of 327 IAC 3. I certify that the daily flow generated in the area that will be collected by the project system will not cause overflowing or bypassing in the collection system from locations other than NPDES authorized discharge points and that there is sufficient capacity in the receiving water pollution treatment/control facility to treat the additional daily flow and remain in compliance with applicable NPDES permit effluent limitations. I certify that the proposed average flow will not result in hydraulic or organic overload. I certify that the proposed collection system does not include new combined sewers or a combined sewer extension to existing combined sewers. I certify that the ability for this collection system to comply with 327 IAC 3 is not contingent on water pollution/control facility construction that has not been completed and put into operation. I certify that the project meets all local rules, laws, regulations, and ordinances. The information submitted is true, accurate, and complete to the best of my knowledge and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

Reference: *(Water Pollution Control Board; 327 IAC 3-6-4; filed May 17, 1999, 12:11 p.m.: 22 IR 3086; errata filed Dec 1, 2000, 5:25 p.m.: 24 IR 1033)*